

### **REMARKS**

The undersigned attorney for Applicants thanks Examiner Levy for the courtesy of a telephone interview on January 8, 2009. As a result of the interview, substantial progress was made in resolving and/or limiting the issues remaining in prosecution. In particular, the Examiner agreed to withdraw the obviousness rejection of claims 28-36 and 38-44. The Examiner also agreed to withdraw the finality of the rejection.

The § 102(e) rejection was also discussed during the interview and for the reasons discussed below, Applicants believe that this rejection should be withdrawn.

#### ***Claim Amendments***

Claim 28 is amended to make it clear that the pesticidal composition is in a solid, dry form, and that it is effective to kill pests upon ingestion by the pests. Claim 44 is cancelled as unnecessary in view of the amendment to claim 28.

#### ***Claim Rejections***

##### ***§ 102(e) Rejection Based on Sedun***

Claims 28-35 and 38-44 stand rejected as being anticipated by Sedun pursuant to 35 USC § 102(e). Applicants respectfully disagree and request that Sedun once again be withdrawn as it still does not anticipate the claimed invention.

In view of the amendment to claim 28, the pesticidal composition of the invention is limited to one that is in a solid, dry form, and that is effective against pests upon ingestion by the pest. The pending claims are believed to be patentably distinct from Sedun for at least the reasons explained below.

First, Sedun further fails to identically disclose the claimed invention because it is limited to a herbicidal composition that is effective to kill unwanted vegetation. Sedun fails to disclose a solid, dry composition of the type claimed that is effective to kill pests as a result of the pest ingesting the composition. Plant pests such as the broad leaf weeds that Sedun seeks to control do not ingest food and nutrients. By definition, “ingest” means “to take, as food, into the body.” (Dictionary.com.) Plants do not ingest; they absorb compounds either through their roots or through their leaves. Because they cannot ingest they cannot take in solid compounds such as pesticidal compositions and/or baits.

Sedun also fails to identically disclose a solid, dry herbicidal composition. However, the Examiner argues in the Office Action that “[s]olid baits are seen as the dry concentrate @ col. 6, line 16, 17.” (Office Action, p. 2.) Applicants note that the term “dry” is used in the Sedun reference in only two instances, i.e., at col. 2, lines 34-35 and at col. 6, line 17. In both instances, Sedun refers only to a dry *concentrate*, which is not able to be used as a herbicidal composition for a number of reasons. First, to be effective as a herbicide, the composition disclosed by Sedun must be in a form that can penetrate the foliage of the weeds. The dry concentrate cannot do so, thus the dry concentrate must be added to a solvent (e.g., water) before it is applied to the plants. If one attempts to use the dry concentrate in its solid form, it will not penetrate the plant and it will be of no use. Further, a concentrated herbicide, even if it includes a solvent such as water, were to be applied, it would not be a *selective* (which Sedun seeks to provide) because it would burn grasses as well as the broad leaf weeds that it is meant to control. Thus, neither a liquid or a dry concentrate disclosed by Sedun would be effective unless diluted before use.

Elsewhere, Sedun teaches that in addition to a dry concentrate, its composition can be used as a “ready-to-use liquid composition,” a “ready-to-use composition,” and as a “liquid concentrate.” (See col. 2, lines 33-35 and col. 6, lines 14-30.) The terms “ready-to-use liquid composition” and “ready-to-use composition” are used synonymously, and neither can be regarded as a solid, dry composition. That the ready-to-use formulations are in liquid form and are made ready-to-use by the addition of water is clear from Sedun’s disclosure at col. 6, line 40 – col. 7, line 24 and in the Examples.

Thus, Sedun fails to identically disclose any pesticidal composition that is in a solid, dry form. The liquid formulations that it discloses clearly are not dry, and any concentrated formulation that might be dry is only able to be used after it made to be a liquid formulation by the addition of water.

For all of the foregoing reasons, Sedun fails to disclose the composition required by claim 28. Accordingly, the rejection of claim 28 and its dependent claims 29-35 and 38-44 on the basis of Sedun should be withdrawn.

*§ 103 rejection Based on GB 2368284 and Sedun*

The Office Action also includes a rejection of claims 28-36 and 38-44 as being obvious over GB 2368284 (the “GB reference”) in view of Sedun. During the interview, the

Examiner agreed to withdraw this rejection because the GB reference does not disclose or suggest the claimed active ingredient, i.e., the first component, and Sedun does not remedy the deficiencies of the GB reference. Accordingly, claims 28-36 and 38-44 distinguish over this combination of references.

***Conclusion***

In view of the foregoing remarks, Applicants submits that all pending claims are in condition for allowance, and allowance is respectfully requested. However, in the event that, for some reason, the Examiner does not allow the applications, Applicants remind the Examiner of his agreement to withdraw the finality of the rejection. The Examiner is encouraged to telephone the undersigned attorney for Applicant if such communication is deemed to expedite prosecution of this application.

Respectfully submitted,

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